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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Casino Data Systems

Serial No. 74/622,053

Bernhard Kreten for Casino Data Systems.

David H. Stine, Trademark Examining Attorney, Law Office 103 (Michael Szoke, Acting Managing Attorney).

Before Hohein, Hairston and Walters, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Casino Data Systems has filed an application to register the mark OASIS for services which were subsequently identified as "computer programming services specifically tailored for use by casino operators in a gaming environment."[1]

[1] Application Serial No. 74/622,053 filed January 17, 1995; alleging dates of first use of July 1, 1991.

Registration has been finally refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d) on the basis of two registrations, both for the mark OASIS, but owned by different registrants: Registration No. 1,456,289 for "computer programs and accompanying instruction manuals sold as a unit therewith;"[2] and Registration No. 1,803,656 for "electronic gaming machines."[3] In addition, the Examining Attorney refused registration on the ground that applicant's specimens do not evidence use of OASIS as a service mark.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested.

We note at the outset that applicant's mark is identical to both of the marks in the cited registrations. Thus, in analyzing likelihood of confusion, we will focus our attention, as has applicant, on the respective goods and services.

Registration No. 1,456,289

With respect to the goods in this registration, i.e., computer programs and instruction manuals, applicant argues that third-party software, including registrant's computer

[2] Issued September 8, 1987; Sections 8 & 15 affidavit filed; alleging dates of first use of September 30, 1979.
[3] Issued November 9, 1993; alleging dates of first use of May 16, 1992.

programs, cannot be used with applicant's computer programming services because it is not compatible. Also, applicant argues that, even if registrant's computer programs were compatible, applicant's goods are complex and expensive hardware sold to a "niche" market, i.e., casino managers and owners, who will not confuse the source of applicant's computer programming services for use in a gaming environment and registrant's computer programs.

However, as pointed out by the Examining Attorney, in the case of a registration covering computer programs, with no restrictions as to the nature of the computer programs or the channels of trade in which the goods travel, we must assume that the computer programs cover a wide variety of applications and travel in all normal channels of trade for such goods. In re Linkvest S.A., 24 USPQ2d 1716 (TTAB 1992). In view thereof, and because there is no specific or mutually exclusive limitation in the identification of goods in the cited registration, we must assume, for our purposes, that registrant's computer programs are of a type which may be used in a gaming environment. Accordingly, casino purchasing personnel, assumed to be familiar with OASIS computer programs for use in a gaming environment, who then encounter applicant's programming services for use in the same environment, and sold under the identical mark,

are likely to believe that these goods emanate from or are sponsored by the same source. Compare In re Compagnie Internationale Pour L'Informatique-Cil Honeywell Bull, 223 USPQ 363 (TTAB 1984) and In re Graphics Technology Corp., 222 USPQ 179 (TTAB 1984).

With respect to the third-party registrations for OASIS marks, as the Examining Attorney correctly notes, such registrations are entitled to little weight on the question of likelihood of confusion. See In re Hub Distributing Inc., 218 USPQ 284 (TTAB 1983). They are not evidence of what happens in the marketplace or that the public is familiar with the use of the marks therein. Also, only a handful of the registrations cover goods/services arguably related to those involved herein.

We should also note that applicant is not without remedy. Where the goods in a registration are broadly described, an applicant may seek to restrict the scope of the description by way of a petition to partially cancel or restrict the registration. See Section 18 of the Act, 15 U.S.C. §1068, and Eurostar Inc. v. "Euro-Star" Reitmoden GmbH & Co. KG, 34 USPQ2d 1266 (TTAB 1994).

Registration No. 1,803,656

With respect to the goods in this registration, i.e., electronic gaming machines, applicant acknowledges that

these goods and applicant's computer programming services for use in a gaming environment may be purchased by the same casino managers and owners. However, applicant argues that the goods and services are quite different in nature; that they would be used by different people; and that, more importantly, the common purchasers (casino managers and owners) are "an insular, sophisticated group" in the gaming industry who would not likely be confused as to the source of these goods and services. In particular, applicant argues that the sophisticated purchasers to whom its services are directed would not be confused between the source of origin of an electronic gaming machine, which is exposed to and entices customers to play one shot machine in favor of another; and applicant's programming services, which are relied on to track player activity. Applicant points out that a casino owner or manager may well buy hundreds of slot machines, but only one system for which programming services and support are required. Further, applicant maintains that the prospective purchasers of its services are exposed to demonstrations of the services in the intended casino environment. Finally, applicant notes that there have been no instances of actual confusion involving registrant's mark OASIS for electronic gaming machines and applicant's mark for its services.

While we have carefully considered applicant's arguments, we nonetheless agree with the Examining Attorney that use of applicant's mark OASIS for its computer programming services in a gaming environment is likely to cause confusion with registrant's identical mark OASIS for electronic gaming machines. As noted by the Examining Attorney, it is clear from the record that applicant's services are designed to track player activity at gaming machines. Thus, these services are of a type which may be used in connection with registrant's electronic gaming machines. Indeed, electronic gaming machines and services designed to monitor such machines are complementary products and services. Moreover, applicant has acknowledged that common purchasers may be exposed to both marks. While individuals who acquire equipment and services for casinos would be expected to exercise a certain degree of care in purchasing such products and services, we believe even those individuals may be confused when such closely related goods and services as electronic gaming machines and computer programming services in for use in tracking player activity at gaming machines are offered under the identical mark. Such individuals may well assume that registrant's electronic gaming machines and applicant's computer programming services which are

used to track player activity at gaming machines are designed to be part of a single system, or are otherwise produced by the same entity. In any event, we believe that these goods and services are so closely related that, when offered under the identical mark, confusion is likely.

Whether Specimens Are Evidence of Service Mark Use

Applicant submitted as specimens three copies of a brochure, the front and an inside page of which are reproduced below.

According to the Examining Attorney, the specimens are "merely advertisements for goods" and do not show use of the mark OASIS in connection with computer programming services.

We disagree. It is clear from the specimen brochure that applicant offers a comprehensive slot accounting, player marketing and analysis system. Such a system involves programming services because, as indicated on the brochure, it is customized to meet the needs of the individual casino. It is not necessary that applicant spell out in the brochure that it offers computer programming services. Under the circumstances, we find that the specimens are acceptable evidence of service mark use.

Decision: The refusals to register under Section 2(d) of the Trademark Act are affirmed; the refusal to register on the basis of the specimens is reversed.

G. D. Hohein

P. T. Hairston

C. E. Walters
Administrative Trademark
Judges, Trademark Trial and
Appeal Board